

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>  <b>W.R. GRACE &amp; CO., <i>et al.</i>,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (KJC)</b>
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**FEE AUDITOR’S FINAL REPORT REGARDING THE MONTHLY APPLICATIONS  
FOR DECEMBER 2009 THROUGH MAY 2012 AND THE FINAL APPLICATION OF  
NELSON MULLINS RILEY & SCARBOROUGH LLP FOR COMPENSATION FOR  
SERVICES AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD OF  
JULY 19, 2001 THROUGH FEBRUARY 3, 2014 AND APPROVAL OF  
POST-EFFECTIVE DATE FEES RELATING TO FEE APPLICATIONS**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Monthly Applications for December 2009 through May 2012 and the Final Application of Nelson Mullins Riley & Scarborough LLP for Compensation for Services and Reimbursement of Expenses for the Period of July 19, 2001 through February 3, 2014 and Approval of Post-Effective Date Fees Relating to Fee Applications (the “Applications”).

**BACKGROUND**

1. Nelson Mullins Riley & Scarborough LLP (“Nelson Mullins”) was retained as special counsel to the Debtors. In the Applications, Nelson Mullins seeks approval of fees and expenses as follows: fees totaling \$3,179.00 and expenses totaling \$45.95 for its services from December 1, 2009 through May 31, 2012 (the “December 2009 – May 2012 Monthly Applications”); final approval of

fees totaling \$1,038,748.50<sup>1</sup> and expenses totaling \$26,630.21<sup>2</sup> for its services from July 19, 2001 through February 3, 2014 (the “Final Application Period”); and approval of post-Effective Date fees totaling \$10,077.00.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2014, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We emailed an inquiry to Nelson Mullins based upon our review, and we received a response from Nelson Mullins, portions of which response are quoted herein.

## DISCUSSION

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<sup>1</sup>We note that the total of the fees requested in Nelson Mullins’ 33 prior fee applications, plus the compensation sought in the December 2009 – May 2012 Monthly Applications, is \$925,479.50. It appears that Nelson Mullins has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 6, to arrive at the figure it seeks of \$1,038,748.50. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

<sup>2</sup>We note that the total of the expenses requested in Nelson Mullins’ 33 prior fee applications, plus the expenses sought in the December 2009 – May 2012 Monthly Applications, is \$24,475.16. The Court ordered no reductions for the prior interim periods, which periods are discussed in more detail in paragraph 6, and thus Nelson Mullins has deducted no sums from this amount to arrive at the figure it seeks of \$26,630.21. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

**December 2009 – May 2012 Monthly Applications**

3. We have no issues with, or objections to, the fees and expenses in the December 2009 – May 2012 Monthly Applications.

4. Thus, we recommend approval of \$3,179.00 in fees and \$45.95 in expenses for Nelson Mullins' December 2009 – May 2012 Monthly Applications.

**Final Application Period**

5. We noted that Nelson Mullins had requested final approval of fees totaling \$1,038,748.50, however, we calculated Nelson Mullins' final fees at \$915,807.50, for a difference of \$122,941.00. We also noted that Nelson Mullins had requested final approval of expenses totaling \$26,630.21, but we calculated Nelson Mullins' final expenses at \$24,475.16, for a difference of \$2,155.05. We provided our calculations to Nelson Mullins, and Nelson Mullins responded: "Nelson Mullins agrees with your calculations." Thus, we recommend that Nelson Mullins' final fee request be reduced by \$122,941.00 and its final expense request be reduced by \$2,155.05.

**Prior Interim Applications**

6. We note that we previously filed the following final reports for Nelson Mullins' prior interim applications, which final reports we incorporate by reference herein, and we also note the following orders that ruled on Nelson Mullins' prior interim fee applications:

2<sup>nd</sup> - 3<sup>rd</sup> Periods: Amended Fee Auditor's Final Report Regarding Fee Application of Nelson Mullins Riley & Scarborough, LLP for the Second and Third Interim Periods (Docket #3036) filed on or about November 19, 2002, in which we recommended approval of fees totaling \$247,578.50 and expenses totaling \$4,111.09, reflecting our recommended reduction of

\$1,075.60 in fees, as further explained in paragraphs 4 and 6 of that final report. The Court approved \$247,825.00 in fees and \$4,111.09 in expenses in the Order Approving Quarterly Fee Applications for the First, Second and Third Periods, dated November 25, 2002 (Docket #3091).

4<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of Nelson Mullins Riley & Scarborough, LLP for the Fourth Interim Period (Docket #2450) filed on or about July 29, 2002, in which we recommended approval of fees totaling \$62,909.00 and expenses totaling \$322.04. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fourth Period, dated October 9, 2002 (Docket #2797).

5<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of Nelson Mullins Riley & Scarborough, LLP for the Fifth Interim Period (Docket #2917) filed on or about October 31, 2002, in which we recommended approval of fees totaling \$55,739.00 and expenses totaling \$701.74, reflecting our recommended reduction of \$4,654.50 in fees, as further explained in paragraphs 5 and 6 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fifth Period, dated November 25, 2002 (Docket #3092).

6<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of Nelson Mullins Riley & Scarborough, LLP for the Sixth Interim Period (Docket #3372) filed on or about February 11, 2003, in which we recommended approval of fees totaling \$35,771.00 and expenses totaling \$615.50, reflecting our

recommended reduction of \$4,187.50 in fees, as further explained in paragraphs 5 and 6 of that final report. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Sixth Period, dated March 14, 2003 (Docket #3511).

7<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of Nelson Mullins Riley & Scarborough, LLP for the Seventh Interim Period (Docket #3714) filed on or about April 25, 2003, in which we recommended approval of fees totaling \$22,038.00 and expenses totaling \$289.77. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Seventh Period, dated July 28, 2003 (Docket #4157).

8<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of Nelson Mullins Riley & Scarborough, LLP for the Eighth Interim Period (Docket #3992) filed on or about July 2, 2003, in which we recommended approval of fees totaling \$16,924.00 and expenses totaling \$141.65. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Eighth Period, dated September 22, 2003 (Docket #4480).

9<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of Nelson Mullins Riley & Scarborough, LLP for the Ninth Interim Period (Docket #4451) filed on or about September 18, 2003, in which we recommended approval of fees totaling \$33,716.50 and expenses totaling \$444.22. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Ninth Period, dated December 15, 2003 (Docket #4827).

- 10<sup>th</sup> Period: Fee Auditor's Final Report Regarding Fee Application of Nelson Mullins Riley & Scarborough, LLP for the Tenth Interim Period (Docket #5069) filed on or about February 5, 2004, in which we recommended approval of fees totaling \$102,250.00 and expenses totaling \$1,313.47. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Tenth Period, dated April 26, 2004 (Docket #5482).
- 11<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications With No Fee or Expense Issues for the Eleventh Interim Period (Docket #5675) filed on or about June 1, 2004, in which we recommended approval of fees totaling \$19,968.00 and expenses totaling \$277.40. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Eleventh Period, dated June 16, 2004 (Docket #5822).
- 12<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twelfth Interim Period (Docket #6320), filed on or about September 3, 2004, in which we recommended approval of fees totaling \$32,451.50 and expenses totaling \$1,398.78. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twelfth Period, dated September 27, 2004 (Docket #6465).
- 13<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirteenth Interim Period (Docket #7013), filed on or about November 22, 2004, in which we

recommended approval of fees totaling \$31,217.00 and expenses totaling \$461.65. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirteenth Period, dated January 26, 2005 (Docket #7622).

14<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Fourteenth Interim Period (Docket #7982), filed on or about March 8, 2005, in which we recommended approval of fees totaling \$32,707.00 and expenses totaling \$589.95. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fourteenth Interim Period, dated March 22, 2005 (Docket #8081).

15<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Fifteenth Interim Period (Docket #8561), filed on or about June 6, 2005, in which we recommended approval of fees totaling \$29,961.00 and expenses totaling \$133.51. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fifteenth Period, dated June 29, 2005 (Docket #8728).

16<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Sixteenth Interim Period (Docket #9387), filed on or about September 12, 2005, in which we recommended approval of fees totaling \$18,786.00 and expenses totaling \$146.24. These recommendations were adopted in the Order Approving Quarterly Fee

Applications for the Sixteenth Period, dated September 27, 2005 (Docket #9513).

17<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Seventeenth Interim Period (Docket #11168), filed on or about November 28, 2005, in which we recommended approval of fees totaling \$19,661.50 and expenses totaling \$125.63. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Seventeenth Period, dated December 21, 2005 (Docket #11402).

18<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Eighteenth Interim Period (Docket #12019), filed on or about March 9, 2006, in which we recommended approval of fees totaling \$22,367.00 and expenses totaling \$83.48. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Eighteenth Period, dated March 27, 2006 (Docket #12121).

19<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Nineteenth Interim Period (Docket #12525), filed on or about May 25, 2006, in which we recommended approval of fees totaling \$14,137.50 and expenses totaling \$77.81. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Nineteenth Period, dated June 16, 2006 (Docket



#12660).

20<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twentieth Interim Period (Docket #13183), filed on or about September 8, 2006, in which we recommended approval of fees totaling \$22,692.00 and expenses totaling \$198.22. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twentieth Period, dated September 26, 2006 (Docket #13298).

21<sup>st</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-First Interim Period (Docket #13963), filed on or about December 8, 2006, in which we recommended approval of fees totaling \$24,205.00 and expenses totaling \$9,481.52. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-First Period, dated December 19, 2006 (Docket #14069).

22<sup>nd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Second Interim Period (Docket #14868), filed on or about March 15, 2007, in which we recommended approval of fees totaling \$2,377.00 and expenses totaling \$38.10. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Second Period, dated May 3, 2007 (Docket #15494).

23<sup>rd</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Third Interim Period (Docket #16037), filed on or about June 13, 2007, in which we recommended approval of fees totaling \$2,388.00 and expenses totaling \$68.77. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Third Period, dated June 20, 2007 (Docket #16105).

24<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Fourth Interim Period (Docket #16786), filed on or about September 10, 2007, in which we recommended approval of fees totaling \$9,306.50 and expenses totaling \$2,855.03. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fourth Period, dated September 25, 2007 (Docket #16916).

25<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Fifth Interim Period (Docket #17542), filed on or about December 4, 2007, in which we recommended approval of fees totaling \$1,956.50 and expenses totaling \$126.49. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Fifth Period, dated December 13, 2007 (Docket #17629).

26<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications

with No Fee or Expense Issues for the Twenty-Sixth Interim Period (Docket #18176), filed on or about February 29, 2008, in which we recommended approval of fees totaling \$1,605.50 and expenses totaling \$53.45. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Sixth Period, dated March 12, 2008 (Docket #18270).

27<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Seventh Interim Period (Docket #18887), filed on or about June 9, 2008, in which we recommended approval of fees totaling \$918.00 and expenses totaling \$44.60. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Seventh Period, dated June 23, 2008 (Docket #18989).

28<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Eighth Interim Period (Docket #19535), filed on or about September 15, 2008, in which we recommended approval of fees totaling \$11,858.00 and expenses totaling \$17.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Eighth Period, dated October 1, 2008 (Docket #19663).

29<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Ninth Interim Period (Docket

#20150), filed on or about November 26, 2008, in which we recommended approval of fees totaling \$10,739.50 and expenses totaling \$89.51. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Ninth Period, dated December 17, 2008 (Docket #20283).

30<sup>th</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirtieth Interim Period (Docket #21063), filed on or about March 21, 2009, in which we recommended approval of fees totaling \$4,296.00 and expenses totaling \$42.44. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirtieth Period, dated April 2, 2009 (Docket #21173).

31<sup>st</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Second Interim Period (Docket #23240), filed on or about September 15, 2009, in which we recommended approval of fees totaling \$17,763.00 and expenses totaling \$75.87. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Second Period, dated September 28, 2009 (Docket #23352).

32<sup>nd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Second Interim Period (Docket #23240), filed on or about September 15, 2009, in which we recommended approval of fees totaling \$2,450.50 and expenses totaling

\$64.87. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Second Period, dated September 28, 2009 (Docket #23352).

33<sup>rd</sup> Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Fifth Interim Period (Docket #24856), filed on or about May 28, 2010, in which we recommended approval of fees totaling \$780.00 and expenses totaling \$0.08. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Fifth Period, dated June 7, 2010 (Docket #24917).

34<sup>th</sup> Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Thirty-Sixth Interim Period (Docket #25384), filed on or about September 10, 2010, in which we recommended approval of fees totaling \$864.00 and expenses totaling \$39.33. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Sixth Period, dated September 13, 2010 (Docket #25397).

7. We have reviewed the final reports and orders allowing fees and expenses for the prior interim periods, and we do not believe there is any reason to change any of the amounts awarded for the prior interim periods.

#### **Post-Effective Date Fees**

8. We note that in addition to its final fee request, but not included in its total fees, Nelson Mullins has requested fees totaling \$10,077.00 for work performed after February 3, 2014,

the Effective Date of the debtors' plan of reorganization. Because these fees were incurred after the Effective Date, they are beyond the scope of our review, and we offer no recommendation or opinion concerning these fees in this report.

## CONCLUSION

9. Thus, we recommend final approval of \$915,807.50 in fees (\$1,038,748.50<sup>3</sup> minus \$122,941.00)<sup>4</sup> and \$24,475.16 in expenses (\$26,630.21<sup>5</sup> minus \$2,155.05)<sup>6</sup> for Nelson Mullins' services for the Final Application Period.<sup>7</sup>

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<sup>3</sup>We note that the total of the fees requested in Nelson Mullins' 33 prior fee applications, plus the compensation sought in the December 2009 – May 2012 Monthly Applications, is \$925,479.50. It appears that Nelson Mullins has deducted from this amount all of the reductions ordered by the Court for the prior periods, which periods are discussed in more detail in paragraph 6, to arrive at the figure it seeks of \$1,038,748.50. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

<sup>4</sup>This is the amount of our recommended reduction to correct Nelson Mullins' final fee request. *See* paragraph 5.

<sup>5</sup>We note that the total of the expenses requested in Nelson Mullins' 33 prior fee applications, plus the expenses sought in the December 2009 – May 2012 Monthly Applications, is \$24,475.16. The Court ordered no reductions for the prior interim periods, which periods are discussed in more detail in paragraph 6, and thus Nelson Mullins has deducted no sums from this amount to arrive at the figure it seeks of \$26,630.21. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

<sup>6</sup>This is the amount of our recommended reduction to correct Nelson Mullins' final expense request. *See* paragraph 5.

<sup>7</sup>In addition to its final fee request, but not included in its total fees, Nelson Mullins requested approval of post-Effective Date fees totaling \$10,077.00. We make no recommendation, and offer no opinion, concerning Nelson Mullins' post-Effective Date fees in this report. *See* paragraph 8.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**



By: \_\_\_\_\_

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**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 2nd day of August, 2014.



\_\_\_\_\_  
Warren H. Smith

## **SERVICE LIST**

### **Notice Parties**

#### **The Applicant**

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